

Applicants: Nika Adham, et al.  
U.S. Serial No.: 09/116,676  
Filed: July 16, 1998  
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#### REMARKS

This Amendment is filed in response to the Office Action issued September 29, 2003 in connection with the subject application. Claims 209, 214, 218-220 and 222-228 were pending in the above-identified application. By this Amendment, applicants have amended claims 224, 226 and 228, and have amended the specification to specifically refer to the trademark FLAG® of the Eastman Kodak Company and to add a corresponding description. Accordingly, upon entry of this Amendment, claims 209, 214, 218-220 and 222-228 as amended, will be pending and under examination.

Support for the amendments to this specification at page 62 may be found in the product literature attached hereto as **Exhibit A**. Support for the amendments to claims 224, 226 and 228 may be found inter alia in the specification, as originally-filed and as amended hereinabove, on page 62, lines 12-26. Applicants maintain that these amendments raises no issue of new matter and are fully supported by the specification.

Accordingly, applicants respectfully request that this Amendment be entered.

#### Rejection under 35 U.S.C. §112, second paragraph

On page 2 of the September 29, 2003 Office Action, the Examiner rejected claims 209, 214, 218-220 and 222-228 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The Examiner stated that claims 224, 226 and 228 contains the trademark/trade name FLAG® epitope. The Examiner alleged that where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. §112, second paragraph, because the claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product.

The Examiner then suggested that applicants either amend the claims to delete FLAG or present evidence that the amino acid sequence Asp Tyr Lys Asp Asp Asp Asp Lys is what is meant by FLAG, and substitute the sequence in the claims.

In response, applicants respectfully point out that the MPEP §608.01(v) recites:

''Where the identification of a trademark is introduced by amendment, it must be restricted to the characteristics of the product known at the time the application was filed to avoid any question of new matter... Such amendments must be supported by satisfactory showings establishing that the specific nature or process of manufacture of the product as set forth in the amendment was known at the time of filing of the application.''

Applicants have amended claims 224, 226 and 228 to recite the amino acid sequence of the FLAG® epitope. Applicants hereby submit evidence that the characteristics of the product FLAG® (i.e. the amino acid sequence of the epitope) were well known in the art at the time the application was filed. See the Certificate of Analysis of the FLAG® peptide purchased from Kodak (Catalog #IB13070) and a description of FLAG products on pages 1-1 to 1-9 of the Kodak Catalog 1994/95, a copy of which is attached hereto as **Exhibit A**.

Accordingly, applicants respectfully request that this ground of rejection be reconsidered and withdrawn, and the claims now found

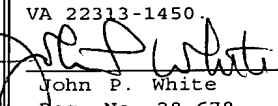
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to be in condition for allowance.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
 John P. White Reg. No. 28,678	12/23/03 Date

  
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